



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2022-0370; FRL-9950-02-R5]

Air Plan Approval; Wisconsin; 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving rules submitted by the Wisconsin Department of Natural Resources (WDNR) as a revision to its State Implementation Plan (SIP). The submitted rules incorporate the 2015 primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone. In addition, WDNR included several updates to ensure implementation of the ozone NAAQS, in areas currently or formerly designated as nonattainment for any ozone standard, in a manner consistent with Clean Air Act (CAA) requirements.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2022-0370. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886-6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, *hatten.charles@epa.gov*. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. What is being addressed in this document?

This rule approves Wisconsin’s April 8, 2022, submission to update chapter NR 404 of Wisconsin’s ambient air quality rule to incorporate the 2015 primary and secondary ozone national ambient air quality standards (NAAQS) and the chapter NR 484 incorporation by reference rule with the monitoring requirements related to the NAAQS to make Wisconsin’s rules consistent with the Federal rules in the Wisconsin SIP. In addition, WDNR revised sections of chapters NR 407 (Operation permits), 408

(Construction permits for direct major sources in nonattainment areas) and 428 (nitrogen oxides (NOx) reasonably available control technologies (RACT)), to ensure implementation of the Federal ozone NAAQS in areas currently or formerly designated as nonattainment for any ozone standard, in a manner consistent with CAA requirements. An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for approval are provided in EPA's notice of proposed rulemaking (NPRM), dated August 16, 2022 (87 FR 50280), and will not be restated here.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period in the NPRM. The comment period ended on September 15, 2022. We received no comments on the proposed rule.

III. What action is EPA taking?

EPA is approving the revision to chapters NR 404, 407, 408, 428, and 484, as submitted on April 8, 2022, into the Wisconsin SIP. Specifically, EPA is approving NR 404.04(5)(d) and (Note), NR 407.02(4)(c)1. and Note, NR 408.02(24)(c), NR 408.02(32)(a)6., NR 428.20, NR 428.21(3), NR 428.255 and NR 484.04 Table 2(7s), as published in the Wisconsin Register #794, effective March 1, 2022.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation

by reference of the Wisconsin Regulations discussed in Section I and listed in Section III of this preamble and set forth in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on

a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on

tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 26, 2023.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2570 is amended by adding paragraph (c)(146) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(146) On April 8, 2022, the Wisconsin Department of Natural Resources (WDNR) submitted a State Implementation Plan (SIP) revision request. WDNR updated chapters NR 404 and 484 of Wisconsin's ambient air quality rule to include the 2015 primary and secondary NAAQS for ozone and its incorporation by reference rule to add EPA-promulgated monitoring requirements related to the NAAQS. WDNR also revised sections of chapters NR 407 (Operation permits), 408 (Construction permits for direct major sources in nonattainment areas) and 428 (Control of Nitrogen Compounds) to ensure implementation of the ozone NAAQS in a manner consistent with Federal regulations.

(i) *Incorporation by reference.* The following sections of the Wisconsin Administrative Code are incorporated by reference:

(A) NR 404 Ambient Air Quality Standards. NR 404.04(5)(d) and Note, as published in the Wisconsin Register, February 2022 No. 794, effective March 1, 2022.

(B) NR 407 Operation permits. NR 407.02(4)(c)1. and Note, as published in the Wisconsin Register, February 2022 No. 794, effective March 1, 2022.

(C) NR 408 Construction permits for direct major sources in nonattainment areas. NR 408.02(24)(c) and Note and (32)(a)6., as published in the Wisconsin Register, February 2022 No. 794, effective March 1, 2022.

(D) NR 428 Control of Nitrogen Compounds. NR 428.20, NR 428.21(3) and NR 428.255, as published in the Wisconsin Register, February 2022 No. 794, effective March 1, 2022.

(E) NR 484 Incorporation by reference. NR 484.04 Table 2(7s), as published in the Wisconsin Register, February 2022 No. 794, effective March 1, 2022.

(ii) [Reserved]